

§ 904.2

(11) Dolphin Protection Consumer Information Act, 16 U.S.C. 1385 *et seq.*;

(12) Driftnet Impact Monitoring, Assessment, and Control Act, 16 U.S.C. 1822 note (Section 4006);

(13) Eastern Pacific Tuna Licensing Act of 1984, 16 U.S.C. 972-972h;

(14) Endangered Species Act of 1973, 16 U.S.C. 1531-1543;

(15) Fish and Seafood Promotion Act of 1986, 16 U.S.C. 4001-4017;

(16) Fisherman's Protective Act of 1967, 22 U.S.C. 1980(g);

(17) Fur Seal Act Amendments of 1983, 16 U.S.C. 1151-1175;

(18) High Seas Fishing Compliance Act, 16 U.S.C. 5506(a);

(19) Lacey Act Amendments of 1981, 16 U.S.C. 3371-3378;

(20) Land Remote-Sensing Policy Act of 1992, 15 U.S.C. 5601 *et seq.*;

(21) Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801-1882;

(22) Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1407;

(23) National Marine Sanctuaries Act, 16 U.S.C. 1431-1439;

(24) North Pacific Anadromous Stocks Convention Act of 1992, 16 U.S.C. 5001-5012;

(25) Northern Pacific Halibut Act of 1982, 16 U.S.C. 773-773k;

(26) Northwest Atlantic Fisheries Convention Act of 1995, 16 U.S.C. 5601-5612;

(27) Ocean Thermal Energy Conversion Act of 1980, 42 U.S.C. 9101 *et seq.*;

(28) Pacific Salmon Treaty Act of 1985, 16 U.S.C. 3631-3644;

(29) Shark Finning Prohibition Act, 16 U.S.C. 1822;

(30) South Pacific Tuna Act of 1988, 16 U.S.C. 973-973(r);

(31) Sponge Act, 16 U.S.C. 781 *et seq.*;

(32) Tuna Conventions Act of 1950, 16 U.S.C. 951-961;

(33) Weather Modification Reporting Act, 15 U.S.C. 330-330e; and

(34) Whaling Convention Act of 1949, 16 U.S.C. 916-916l.

(d) The procedures set forth in this part are intended to apply to administrative proceedings under these and any other statutes or authorities administered by NOAA.

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§ 904.2 Definitions and acronyms.

Unless the context otherwise requires, or as otherwise noted, terms in this Part have the meanings prescribed in the applicable statute or regulation. In addition, the following definitions apply:

Administrator means the Administrator of NOAA or a designee.

Agency means the National Oceanic and Atmospheric Administration (NOAA).

ALJ Docketing Center means the Docketing Center of the Office of Administrative Law Judges.

Applicable statute means a statute cited in § 904.1(c), and any regulations issued by NOAA to implement it.

Authorized officer means:

(1) Any commissioned, warrant, or petty officer of the USCG;

(2) Any special agent or fishery enforcement officer of NMFS;

(3) Any officer designated by the head of any Federal or state agency that has entered into an agreement with the Secretary to enforce the provisions of any statute administered by NOAA; or

(4) Any USCG personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Citation means a written warning (see section 311(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1861(c), and section 11(c) of the Northern Pacific Halibut Act of 1982, 16 U.S.C. 773i(c)).

Civil penalty means a civil administrative monetary penalty assessed under the civil administrative process described in this part.

Decision means an initial or final administrative decision of the Judge.

Ex parte communication means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but does not include inquiries regarding procedures, scheduling, and status.

Final administrative decision means an order or decision of NOAA assessing a civil penalty or permit sanction which is not subject to further Agency review under this part, and which is subject to collection proceedings or judicial review in an appropriate Federal district court as authorized by law.

Forfeiture includes, but is not limited to, surrender or relinquishment of any claim to an item by written agreement, or otherwise; or extinguishment of any claim to, and transfer of title to an item to the U.S. Government by court order or by order of the Administrator under a statute.

Hearing means a civil administrative hearing on a NOVA, NOPS and/or NIDP.

Initial decision means a decision of the Judge that, under applicable statute and regulation, is subject to review by the Administrator.

Judge means Administrative Law Judge.

NIDP means Notice of Intent to Deny Permit.

NMFS means the National Marine Fisheries Service.

NOAA (see *Agency*) means either the Administrator or a designee acting on behalf of the Administrator.

NOPS means Notice of Permit Sanction.

NOVA means Notice of Violation and Assessment of civil penalty.

Party means the respondent and the Agency; a joint and several respondent, vessel owner, or permit holder, if they enter an appearance; and any other person allowed to participate under § 904.204(b).

Permit means any license, permit, certificate, or other approval issued by NOAA under an applicable statute.

Permit holder means the holder of a permit or any agent or employee of the holder, and includes the owner and operator of a vessel for which the permit was issued.

Permit sanction means suspension, revocation, or modification of a permit (see § 904.320).

PPIP means Preliminary Position on Issues and Procedures.

Respondent means a person issued a written warning, NOVA, NOPS, NIDP or other notice.

Settlement agreement means any agreement resolving all or part of an administrative or judicial action. The terms of such an agreement may include, but are not limited to, payment of a civil penalty, and/or imposition of a permit sanction.

USCG means the U.S. Coast Guard.

Vessel owner means the owner of any vessel that may be liable in rem for any civil penalty, or whose permit may be subject to sanction in proceedings under this part.

Written warning means a notice in writing to a person that a violation has been documented against the person or against the vessel which is owned or operated by the person, where no civil penalty or permit sanction is imposed or assessed.

§ 904.3 Filing and service of notices, documents, and other papers.

(a) Service of a NOVA (§ 904.101), NOPS (§ 904.302), NIDP (§ 904.303), Notice of Proposed Forfeiture (§ 904.504), Notice of Seizure (§ 904.501), Notice of Summary Sale (§ 904.505) or Written Warning (§ 904.402) may be made by certified mail (return receipt requested), facsimile, electronic transmission, or third party commercial carrier to an addressee's last known address or by personal delivery. Service of a notice under this subpart will be considered effective upon receipt.

(b) Service of documents and papers, other than such Notices as described in paragraph (a) of this section, may be made by first class mail (postage prepaid), facsimile, electronic transmission, or third party commercial carrier, to an addressee's last known address or by personal delivery. Service of documents and papers will be considered effective upon the date of postmark (or as otherwise shown for government-franked mail), facsimile transmission, delivery to third party commercial carrier, electronic transmission or upon personal delivery.

(c) Whenever this part requires service of a NOVA, NOPS, NIDP, document, or other paper, such service may effectively be made on the agent for service of process, on the attorney for the person to be served, or other representative. Refusal by the person to be served (including an agent, attorney, or representative) of service of a document or other paper will be considered effective service of the document or other paper as of the date of such refusal. In cases where certified notification is returned unclaimed, service will be considered effective if the U.S. Postal Service provides an affidavit stating